

TASMANIA

POLICE SERVICE AMENDMENT BILL 2008

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POLICE SERVICE AMENDMENT BILL 2008

(Brought in by the Minister for Police and Emergency Management, the Honourable James Glennister Cox)

A BILL FOR

An Act to amend the *Police Service Act 2003*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Police Service Amendment Act 2008*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

3. Principal Act

In this Act, the *Police Service Act 2003** is referred to as the Principal Act.

*No. 75 of 2003

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4. Section 8 amended (Delegation)

Section 8 of the Principal Act is amended by omitting paragraph (b).

5. Section 15 amended (Trainees and junior constables)

Section 15 of the Principal Act is amended by omitting subsection (3).

6. Section 29 amended (Inability to perform duties)

Section 29(4) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (i) “terminated;” and substituting “terminated.”;
- (b) by omitting paragraph (j).

7. Section 31A inserted

After section 31 of the Principal Act, the following section is inserted in Division 5:

31A. Police officer may make submission

- (1) Before –
 - (a) directing that a police officer’s remuneration be reduced under section 29(4)(c); or

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- (b) demoting a non-commissioned police officer under section 29(4)(f); or
- (c) making a recommendation under section 29(4)(g); or
- (d) terminating the appointment of a non-commissioned police officer under section 29(4)(h); or
- (e) making a recommendation under section 29(4)(i); or
- (f) making a recommendation under section 30(1); or
- (g) terminating the appointment of, or demoting, a non-commissioned police officer under section 31(1); or
- (h) imposing a fine on a police officer under section 43(3)(c); or
- (i) directing that a police officer's remuneration be reduced under section 43(3)(d); or
- (j) demoting a non-commissioned police officer under section 43(3)(h); or
- (k) terminating the appointment of a non-commissioned police officer under section 43(3)(i); or

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- (l) making a recommendation under section 43(3)(j) –

the Commissioner must –

- (m) notify the relevant police officer of the Commissioner’s intention to so act and his or her reasons for that intention; and
 - (n) provide the police officer with an opportunity to make a submission to the Commissioner, within the period (being not less than 14 days) specified in the notification, as to the reasons why the police officer believes the Commissioner should not so act.
- (2) If a police officer who is notified by the Commissioner under subsection (1)(m) wishes to make a submission to the Commissioner, he or she must make the submission within the period specified in the notification.

8. Section 43 amended (Actions in relation to breaches of code of conduct)

Section 43(3) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (j) “appropriate;” and substituting “appropriate.”;

(b) by omitting paragraph (k).

9. Section 54 amended (General functions and powers of Police Review Board)

Section 54(1)(b) of the Principal Act is amended by omitting “section 65” and substituting “section 60”.

10. Section 55 amended (Application for review relating to promotion)

Section 55 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “below the rank of commander” and substituting “of or below the rank of inspector”;
- (b) by inserting the following subsection after subsection (2):
 - (3) An application for a review under subsection (1) must be –
 - (a) made in writing stating the grounds on which it is made; and
 - (b) lodged with the Police Review Board within 14 days of publication of the notice under section 19.

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11. Part 4, Divisions 3 and 4 substituted

Divisions 3 and 4 of Part 4 of the Principal Act are repealed and the following Divisions are substituted:

Division 3 – Reviews relating to disciplinary matters, &c.

60. Application for review relating to disciplinary matters, &c.

- (1) A police officer of or below the rank of inspector, other than a special constable, (in this Division referred to as “**the applicant**”) may apply to the Police Review Board for a review if he or she is aggrieved by any decision, determination, order or recommendation made by the Commissioner in respect of –
 - (a) any demotion or reduction in remuneration of the police officer; or
 - (b) the termination of the appointment of the police officer; or
 - (c) the imposition by the Commissioner on the police officer of any fine or the forfeiture by the police officer of all or any of his or her remuneration; or

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- (d) a suspension of remuneration or allowances, or remuneration and allowances, under section 41(a); or
 - (e) the payment of costs under section 87.
- (2) An application for review under subsection (1) must be –
- (a) made in writing stating the grounds on which it is made; and
 - (b) lodged with the Police Review Board within 30 days after the applicant has received notification of the decision, determination, order or recommendation in respect of which the review is sought.
- (3) In hearing and determining an application for review under this Division, the Police Review Board is to have regard at all times to the public interest and community confidence in the Police Service and to the Commissioner's responsibilities as set out in section 7.
- (4) The applicant must provide the Commissioner with a copy of the application within 3 days after lodging the application.

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- (5) The Police Review Board may extend the period referred to in subsection (2)(b) if satisfied that exceptional circumstances exist.
- (6) The applicant may withdraw an application for a review.

Division 4 – General provisions

61. Date, time and place of hearing of review

- (1) On receipt by the Police Review Board of an application for review under this Part, the chairperson of the Police Review Board is to fix a date, time and place for the hearing of the application and is to notify the applicant and the Commissioner of that date, time and place.
- (2) The date fixed for the hearing of an application for review must not be earlier than 14 days after the application is received by the Police Review Board.

62. Constitution of Police Review Board for review relating to termination or demotion

- (1) Within 14 days after receipt by the Police Review Board of an application for a review relating to termination or demotion, the chairperson of the Police Review Board is to determine the constitution of the Police Review Board

for the hearing and determination of that application.

- (2) The Police Review Board constituted under subsection (1) is to include the chairperson and at least 2 other members of the Police Review Board.

12. Part 4, Division 5: Heading repealed

Part 4 of the Principal Act is amended by omitting the heading “*Division 5 — General provisions*”.

13. Section 69 repealed

Section 69 of the Principal Act is repealed.

14. Section 70 amended (Attendance by persons)

Section 70 of the Principal Act is amended by inserting after subsection (7) the following subsection:

- (8) The Commissioner must make available to the Police Review Board any one or more of the following persons:
- (a) the applicant for the review;
 - (b) any police officer required or summoned to attend the review.

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15. Sections 75A, 75B, 75C and 75D inserted

After section 75 of the Principal Act, the following sections are inserted in Division 4:

75A. Hearing of applications for review

- (1) On the hearing of an application for review, a witness is only to be examined or cross-examined if the Police Review Board is satisfied that it is necessary to do so.
- (2) On determining an application for review under Division 3, the Police Review Board may uphold the application for review in whole or in part, or may dismiss the application, and may make such orders as it considers necessary or desirable for the purpose of giving effect to its decision.
- (3) Without limiting subsection (2), on the determination of an application for review under Division 3, the Police Review Board may make any one or more of the following orders:
 - (a) an order that the rank or rate of remuneration to which the applicant was reduced by the Commissioner be a higher or lower rank or rate of remuneration than that to which the applicant was so reduced;

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- (b) an order that the amount of any fine imposed on the applicant by the Commissioner be increased or reduced;
 - (c) an order that the amount of the remuneration that the Commissioner directed should be forfeited by the applicant be increased or reduced.
- (4) Subject to section 75B, the decision of the Police Review Board upon the determination of an application for review under this Division is final and the Commissioner is to give effect to that decision accordingly.
- (5) If a person is reinstated or reappointed as a police officer, or reinstated or reappointed to a rank, the person is taken to have continued in service as a police officer, or at that rank, during the period of demotion, suspension or termination.
- (6) When determining an issue of remuneration in relation to an application for review, the Police Review Board is to take into account any employment undertaken and income received by the applicant during his or her period of suspension or termination, including any income derived from outside the Police Service.

75B. Appeal from decision of Police Review Board on point of law

- (1) The applicant or the Commissioner may appeal a decision of the Police Review Board made in relation to an application for review under section 60 to a judge of the Supreme Court, sitting in chambers, only on a point of law and that judge has jurisdiction to hear and determine any such appeal.
- (2) On deciding an appeal under subsection (1), a judge may make such orders as he or she considers necessary or desirable for the purpose of giving effect to his or her decision.
- (3) The Commissioner is to give effect to any decision or order of the Supreme Court made on the hearing of an appeal under subsection (1).

75C. Provision and consideration of new material

- (1) If a police officer, in respect of whom a recommendation is made under section 30 or an action or determination is taken or made under section 31 or section 43(3) –
 - (a) lodges an application for review; and
 - (b) subsequently becomes aware of new material relevant to the Commissioner's

recommendation, action or determination before the matter is finalised by the Police Review Board; and

(c) intends to rely on that material –

the officer is to submit that material to the Commissioner.

(2) If the Commissioner intends to rely on material in addition to that already supplied by or to the police officer referred to in subsection (1), the Commissioner, subject to the requirements of any other relevant legislation, is to provide that material to the police officer –

(a) not less than 7 days before the review; or

(b) if the material is not available within that period, as soon as practicable after the material becomes available.

(3) The Commissioner must consider any new material submitted to him or her under subsection (1) within 7 days after its submission, unless of the opinion that the new material should be considered by the Police Review Board.

(4) The Commissioner or the applicant may apply to the Police Review Board for a matter to be deferred for a reasonable

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period to allow for any new material to be considered.

75D. Procedure on reviews

Subject to this Act, the procedure on the making, hearing and determination of applications for review under this Division is to be as prescribed or, in the absence of regulations in that behalf, as the Police Review Board may determine.

16. Part 5A inserted

After section 82 of the Principal Act, the following Part is inserted:

PART 5A – DETECTOR DOGS

82A. Interpretation of Part 5A

In this Part –

“**detector dog**” includes a police dog and any other dog trained or used by a law enforcement agency to detect any substance or item;

“**detector-dog handler**” means a person, whether a police officer or not, whose duties include handling a detector dog;

“**screen**” means to conduct, using a detector dog, an examination of a

person, vehicle, vessel, aircraft,
premises or any other structure.

82B. Use of detector dogs

- (1) A police officer who enters, or is on or in, a particular place in the performance of his or her duties as a police officer, may be accompanied –
 - (a) by a detector dog; and
 - (b) if the officer is not a detector-dog handler, by a detector-dog handler.
- (2) Where a police officer is authorised, under this or any other legislation, to search a person, vehicle, vessel, aircraft, premises or any other structure, the officer may screen the person, vehicle, vessel, aircraft, premises or structure in the process of conducting the search.
- (3) A police officer may, in the performance of his or her duties as a police officer, without a warrant, screen the following persons:
 - (a) persons at, near or seeking to enter or leave any part of premises being used for the consumption of liquor that is sold at the premises (other than a person in a part of premises being

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used primarily as a restaurant or other dining place);

- (b) persons at, near or seeking to enter or leave a place at which a sporting event, concert or other artistic performance, dance party, parade or other entertainment is being held;
 - (c) persons on, near or seeking to enter or leave a passenger vehicle, vessel or aircraft.
- (4) A police officer may detain a person, or cause him or her to be detained, for the purpose of conducting a screen.
- (5) It is the duty of a police officer to ensure that he or she does not cause a person to be detained for a period longer than is necessary for the proper exercise of the powers conferred by this section.

82C. Protection from liability

The Crown, a police officer and a detector-dog handler are not liable to any action, liability, claim or demand merely because a detector dog entered, or was in or on, premises as provided by this Part or because a detector dog initiated, or inadvertently made, contact with a person.

82D. Offences

- (1) A person must not without lawful excuse strike, injure, maim or kill a detector dog.

Penalty: Fine not exceeding 20 penalty units or imprisonment for a term not exceeding 12 months, or both.

- (2) A person must not without lawful excuse do anything likely to impede or interfere with the effective use of a detector dog.

Penalty: Fine not exceeding 20 penalty units or imprisonment for a term not exceeding 12 months, or both.

17. Section 85 repealed

Section 85 of the Principal Act is repealed.

18. Section 88 substituted

Section 88 of the Principal Act is repealed and the following section is substituted:

88. Application to trainees and junior constables

- (1) The following provisions apply to a trainee and a junior constable as if he or she were a non-commissioned police officer:

- (a) sections 38, 39, 40 and 41;

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- (b) Part 3;
 - (c) Part 5, except sections 79, 80 and 82(4);
 - (d) this Part, except sections 83 and 95.
- (2) The following provisions apply to a trainee as if he or she were a non-commissioned police officer:
- (a) section 57;
 - (b) Divisions 3 and 4 of Part 4 in relation to a fine imposed under section 43(3)(c), a reduction of remuneration under section 43(3)(d) or a termination of appointment under section 43(3)(i).